



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/827,256	04/05/2001	Stephen A. Empedocles	019916-004100US	4344

20350 7590 11/02/2005

TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

EXAMINER

STOCK JR, GORDON J

ART UNIT	PAPER NUMBER
----------	--------------

2877

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

88

Office Action Summary	Application No. 09/827,256	Applicant(s) EMPEDOCLES ET AL.	
	Examiner Gordon J. Stock	Art Unit 2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2005.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5, 11, 24, 25, 27, 32, 34, 35, 37-42, 45, 47, 48, 53 and 54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5, 34, 35, 37-42, 45, 47 and 53 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 11, 24, 25, 27, 32, 48 and 54 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 4/5/01 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Amendment received August 2, 2005 has been entered into the record.

Claim Objections

2. **Claims 11, 24, 25, 27, 32, 48, and 54** are objected to for the following: as for **claim 11**, “the body” on line 13 lacks antecedent basis and “opening” on line 17 should read –openings--; as for **claim 25**, “the trap” lacks antecedent basis; as for **claim 27**, “the body” of line 4 lacks antecedent basis; as for **claim 32**, on line 4 “the body” lacks antecedent basis and on line 11 “the restrained body” lacks antecedent basis; as for **claim 48**, “the site” of lines 2 and 3 lacks antecedent basis; as for **claim 54**, “the sensor surface” of line 7 and “the spectrum” of line 8 lack antecedent basis. **Claim 24** is objected to for depending from an objected base claim.

Corrections required.

Allowable Subject Matter

3. **Claims 5, 34, 35, 37-42, 45, 47, and 53** are allowed.

Claims 11, 24, 25, 27, 32, 48, and 54 would be allowable if rewritten to overcome the objections above.

As to **claim 5**, the prior art of record, taken alone or in combination, fails to disclose or render obvious in a spectral label identification method the steps of generating a second spectrum and identifying the second body, in combination with the rest of the limitations of **claim 5**.

As to **claim 11**, the prior art of record, taken alone or in combination, fails to disclose or render obvious in a spectral label identification method the steps of drawing the first body and drawing the fluid, in combination with the rest of the limitations of **claim 11**.

Art Unit: 2877

As to **claim 27**, the prior art of record, taken alone or in combination, fails to disclose or render obvious in a method the steps of spatially restraining and generating a first spectrum, in combination with the rest of the limitations of **claims 27, 24, and 25**.

As to **claim 32**, the prior art of record, taken alone or in combination, fails to disclose or render obvious in a method the steps sweeping and inhibiting transmission, in combination with the rest of the limitations of **claim 32**.

As to **claim 34**, the prior art of record, taken alone or in combination, fails to disclose or render obvious in a multiplexed assay system the particular optical train and plurality of bodies, in combination with the rest of the limitations of **claim 34**.

As to **claim 35**, the prior art of record, taken alone or in combination, fails to disclose or render obvious in a multiplexed assay system the particular optical train and plurality of bodies, in combination with the rest of the limitations of **claims 35, 37-42**.

As to **claim 45**, the prior art of record, taken alone or in combination, fails to disclose or render obvious in a multiplexed assay system the particular plurality of bodies, in combination with the rest of the limitations of **claims 45, 47, 48, and 53**.

As to **claim 54**, the prior art of record, taken alone or in combination, fails to disclose or render obvious in a multiplexed assay system the particular energy transmitter and optical train, in combination with the rest of the limitations of **claim 54**.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: U.S. Patent 6,055,106 to Grier et al.

U.S. Patent 6,139,831 to Shivashankar et al.

Art Unit: 2877

5. This application is in condition for allowance except for the following formal matters:

objections to the claims as stated above

Prosecution on the merits is closed in accordance with the practice under *Ex parte*

Quayle, 1935 C.D. 11, 453 O.G. 213.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

Fax/Telephone Numbers

If the applicant wishes to send a fax dealing with either a proposed amendment or a discussion with a phone interview, then the fax should:

1) Contain either a statement "DRAFT" or "PROPOSED AMENDMENT" on the fax cover sheet; and

2) Should be unsigned by the attorney or agent.

This will ensure that it will not be entered into the case and will be forwarded to the examiner as quickly as possible.

Papers related to the application may be submitted to Group 2800 by Fax transmission. Papers should be faxed to Group 2800 via the PTO Fax machine located in Crystal Plaza 4. The form of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CP4 Fax Machine number is: (571) 273-8300

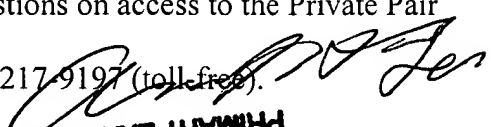
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gordon J. Stock whose telephone number is (571) 272-2431.

The examiner can normally be reached on Monday-Friday, 10:00 a.m. - 6:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr., can be reached at 571-272-2800 ext 77.

Art Unit: 2877

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private Pair system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


HWA (ANDREW) LEE
PRIMARY EXAMINER



gs
October 28, 2005

for

Gregory J. Toatley, Jr.
Supervisory Patent Examiner
Art Unit 2877